Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:	)	
	)	
Replacement of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems	)	WT Docket No. 96-18
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding	)	PP Docket No. 93-253

To: The Commission

COMMENTS OF A+ NETWORK

Frederick M. Joyce
Christine McLaughlin
Its Attorneys

JOYCE & JACOBS, Attys. at Law, LLP
1019 19th Street, N.W.
14th Floor, PH-2
Washington, D.C. 20036
(202) 457-0100

Date: March 18, 1996

TABLE OF CONTENTS

SUMMARY i

I. Statement of Interest 1

A. Creation of The Network 2

B. How the Network Operates 2

II. Interference Avoidance Should be the FCC's Primary Concern 4

A. The Unique Interference Concerns of Shared Frequency Licensees 5

B. Examples of Shared Frequency Interference 6

C. Recommended Solutions 8

D. PCP Licensees have Protected Property Interests 9

III. Exclusivity For Shared Frequency PCPs 10

A. Exclusivity Alternatives in the Shared Freqency Bands 11

1. The "929" Exclusivity Model 12

2. The "Reframing" Exclusivity Model 12

B. Geographic Service Areas 15

IV. Interference Contours for Shared Frequency PCPs 16

V. Height/Power Limitations; Technical Issues 17

VI. Auctions are Inappropriate for Shared Spectrum 17

VII. Response to IRFA: Impact on Small Entities 18

CONCLUSION 21

SUMMARY

A+ Network is the licensee and operator of literally hundreds of private carrier paging ("PCP") sites throughout the United States. In particular, it has used just one shared PCP channel, the 152.480 MHZ frequency channel, to build a seamless nationwide paging operation by linking together small, affiliated local PCP operators from coast to coast. That network now serves over 800,000 paging units every day, in over 6,000 cities and towns. Through this ingenious and efficient use of shared PCP spectrum, A+ Network has grown to become one of the largest paging service providers in the country, while also providing its affiliates an inexpensive method of offering nationwide and regional service to their customers at very reasonable rates. This is precisely the type of creative and spectrum-efficient communications service that the FCC should be promoting.

The protection of incumbent paging licensees against harmful interference, the avoidance of "chaos" in the licensing of shared-frequency paging stations, and the protection of the considerable sums of money and labor that have been invested in these paging systems -- should be the FCC's overarching concerns in these crucial rulemaking proceedings. Even if the FCC adopts some form of exclusivity and/or wide-area licensing for shared-frequency PCPs, there are so many licensees on these frequencies that interference issues are unlikely to ever completely go away. Therefore, it is essential that the FCC adopt some formal rules and mechanisms for dealing with this daily problem.

Commercial, shared-frequency PCP licenses should be converted to exclusive use, in a manner that protects all incumbent operators and their customers. Since shared frequency operations are already inherently difficult, expensive, and less valuable than exclusive-use

"RCC" paging channels, shared frequency licensees should not be required to "bid" for the right to operate on these frequencies. Requiring competitive bidding for these already congested shared frequencies, would be akin to auctioning off the shuffle-board concession on the Titanic; ultimately, there would be no winners.

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:	)	
	)	
Replacement of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems	)	WT Docket No. 96-18
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding	)	PP Docket No. 93-253

To: The Commission

COMMENTS OF A+ NETWORK

A+ Network, Inc., through its attorneys, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, respectfully submits these "Comments" in response to the Commission's above-referenced Notice of Proposed Rulemaking ("Notice"). In particular, these comments address the unique concerns in this rulemaking proceeding of shared-frequency private carrier paging ("PCP") operators, such as A+ Network.[1]

I. Statement of Interest

A+ Network , a publicly owned and traded paging company formed through the merger of A+ Communications and Network USA (NASDAQ symbol "ACOM"), is uniquely qualified to comment on proposed changes to the private carrier paging services, and the impact that the FCC's freeze will have on these services. A+ Network has accomplished with private carrier

---

[1] A+ Network will be submitting under separate cover Comments pertaining specifically to the FCC's rulemaking proposals for 929/931 MHZ paging.

paging ("PCP") service, what no other paging company previously accomplished: it has successfully "networked" together hundreds of small, local PCP operators on a single, shared use PCP channel, to build a seamless nationwide paging operation.

A. Creation of The Network

Beginning in 1988, A+ Network (Network USA, at the time) began building a nationwide 152.480 MHZ paging network, by contacting small operators who held FCC licenses on the same frequency, and offering them affiliation. Where previously they could provide PCP service only as far as their local transmitters could send a radio signal, now an affiliate could offer their customers statewide, regional or nationwide service wherever any member of the A+ network was located. A+ Network invested millions of dollars in the design, construction and operation of this network. As a result of this considerable expenditure of time, money, and labor, A+ Network has rapidly grown to become one of the largest paging operators in the nation, and it is probably the largest PCP operator in the nation.

Today, the A+ Network provides service to over 800,000 paging units nationwide on a single, shared, 152.480 MHZ frequency channel. This 152.480 MHZ network consists of over 1,400 transmitter sites, providing service in over 6,000 cities and towns across the United States, including almost all of the 300 largest SMSAs in the country. As you can see from the attached map depicting the geographic scope of this network, it covers most of the Continental United States.

B. How the Network Operates.

A customer wishing to page an A+ Network or affiliate subscriber dials the A+ Network telephone number, which accesses A+ Network's automatic paging terminal in Pensacola,

Florida. The customer is then asked for the subscriber's identification ("ID") number; when the terminal recognizes the number, the page is transmitted to a satellite, then beamed back to one or more A+ Network receive stations nationwide.

From that receive site, the page is sent out over one of many TNPP networks, comprised of A+ Network subsidiaries and affiliates who have "tied" their terminals together to create wider coverage for their paging systems. To promote spectrum efficiency, A+ Network offers its customers a variety of paging "zone" sizes; the page is transmitted only through the transmitters of the requested zone.

A+ Network has built its operation true to the goals of the FCC in creating PCP service: A+ Network and its affiliates provide tailored paging services to a wide variety of customers at extremely competitive prices. The network relies on the collective strength and harmony of many small affiliates, whose own businesses benefit from the increased coverage their affiliation with A+ Network provides.

A+ Network's and its affiliates' businesses rely upon timely and sensible frequency coordination and FCC licensing processes, and a regulatory environment that is fundamentally concerned with protecting shared-use operators from harmful interference and unnecessary regulatory burdens. A+ Network has already explained in its Comments on the FCC's "Interim Licensing" proposal that the "freeze" on all PCP applications has undermined this good faith reliance upon the FCC, to the detriment of hundreds of thousands of its subscribers.

In these Comments, A+ Network wants to suggest positive regulatory steps that this agency should take to protect and enhance the substantial investments that A+ Network, its subscribers, affiliates and shareholders, and other PCP operators have made in shared-frequency

paging operations.

II. Interference Avoidance Should be the FCC's Primary Concern

The FCC was not created to raise public revenues; rather, it was expressly created "to make available, so far as possible ... rapid, efficient, Nationwide and worldwide wire and radio communication service ... at reasonable charge ...." 47 U.S.C. § 151. Hand in glove with the statutory duty to grant radio licenses to promote these services, is the statutory duty to protect these radio stations. One of the FCC's primary responsibilities is to "prevent interference between stations." See 47 U.S.C. § 303(f).

It was settled long ago in Journal Company v. Federal Radio Commission, 48 F.2d 461, 463 (D.C. Cir. 1931) that where a radio station "has been constructed and maintained in good faith, it is in the interests of the public and the common justice to the owner of the station that its status should not be injuriously affected, except for compelling reasons." Accordingly, in that landmark decision, the FCC was ordered to rescind a decision to increase the power of a co-channel station, thereby eliminating the possibility of harmful electrical interference to the existing licensee. Id. at 464.

The D.C. Circuit Court of Appeals thus laid the foundation for subsequent Commission licensing decisions in the public interest: "No station that has been operated in good faith should be subjected to a change of frequency or to a reduction of its normal and established service area, except for compelling reasons." Id. at 463. That Court succinctly stated that prevention of harmful interference runs to the very heart of the Communications Act: "The purpose of this regulation obviously is to prevent chaos and to insure satisfactory service" particularly since the

"installation and maintenance" of radio stations "involve a very considerable expense." Id.

These fundamental statutory considerations -- the protection of incumbent paging licensees against harmful interference, the avoidance of "chaos" in the licensing of paging stations, and the protection of the considerable sums of money and labor that have been invested in these paging systems -- should be the FCC's overarching concerns in these crucial rulemaking proceedings. Any discussion of raising more auction revenues at the expense of these paging industry and statutory concerns, would be foolish at best and unlawful at worst.

The issue of shared-channel interference on commercial PCP stations merited only a passing, one-sentence reference in the FCC's over 70 page NPRM. See NPRM at ¶ 32. A+ Network submits that before the FCC can even consider licensing additional carriers on these already congested shared-use frequencies, by auction or other means, it has a statutory duty to ensure that its additional licensing schemes do not injure incumbent licensees and their hundreds of thousands of subscribers.

A. The Unique Interference Concerns of Shared Frequency Licensees.

Perhaps unique among all commercial FCC licensees, the onus for preventing harmful radio interference to PCP operators rests, in the first instance at least, with the licensee. The Commission's applicable rule states as follows: "Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements." 47 C.F.R. § 90.173(b). Only if those efforts fail, the Commission may "impose restrictions" or "deny ... the use of any frequency" to prevent harmful interference. Id.

Shared frequency services may thus be an anomaly under Title III of the Communications Act in this important respect: the incumbent licensee must first incur harmful

interference from a subsequently licensed operator before the Commission will act to resolve the interference problem. This dilemma for incumbent shared frequency licensees is obviously at odds with 60 years' worth of precedents under the Communications Act.

B. Examples of Shared Frequency Interference.

As one of the largest, if not the largest, shared-frequency PCP operators in the United States, A+ Network has more than its fair share of experience with shared-channel interference problems. It may help the FCC to understand the nature of the problem by reviewing a "real life" example of an interference issue that was ultimately resolved only after much unnecessary expense and legal wrangling before the FCC.

Not long ago, there were four commercial PCP operators in the Jackson, MS area utilizing the 152.48 MHZ frequency, including A+ Network. Those co-channel licensees in Jackson had all successfully engineered their systems to avoid interference by "cross busying" their transmissions, installing an "arbitrator" and telephone tie-lines between their paging terminals, and equitably sharing airtime between one another. A+ Network, as the last licensee on the subject frequency in the Jackson area, incurred all of the substantial costs involved to ensure interference-free service among the co-channel users in Jackson.

One day, a commercial PCP operator in the Jackson area submitted applications with the FCC to add three new 152.480 MHZ transmitter locations. That applicant proposed to operate all four transmitters on a "stand alone" basis, rather than simulcasting its transmissions, and he proposed to guard against co-channel interference through what is known as "off-air" channel monitoring, rather than by using the automatic inhibitors that the other carriers were using in this area. A+ Network learned about this application by

chance, and wrote to NABER (now PCIA), the FCC's frequency coordinator, explaining that the proposed "stand alone" operations would likely cause harmful interference to all co-channel users unless the proposed transmitters were "tied-in" to the other licensed systems in some manner.

The applicant disclaimed any obligation to simulcast its transmissions or to tie its four transmitters to the existing systems. NABER submitted that application to the Commission, with the recommendation that the applicant system employ terminal connection equipment in conjunction with other users. However, NABER's recommendations are not binding on this agency, and the FCC did not immediately honor NABER's recommendation. Rather, the FCC required A+ Network to submit engineering studies to "prove" the likelihood of interference. It was only after many letters were sent to the FCC, and much money was spent in legal and engineering fees, that the FCC imposed the interference-avoidance "condition" on the applicant's license.

A+ Network has gone through similar expensive exercises on several occasions, where it has found itself in the peculiar position of having to prove to the FCC that its expensive paging stations, with thousands of paging customers, are entitled to protection against interference from subsequent applicants. It is simply absurd that these commercial operators and their customers should have all the burdens of Title II and Title III "common carriers", but none of the protections that the FCC naturally affords to "RCC" paging companies. This unfair anomaly must end before the FCC can even consider exacerbating the problem by auctioning off more licenses on shared frequencies.

C. **Recommended Solutions**.

Even if the FCC adopts some form of exclusivity and/or wide-area licensing for shared-frequency PCPs, there are so many licensees on these frequencies that interference issues are unlikely to ever completely go away. Therefore, it is essential that the FCC adopt some formal rules and mechanisms for dealing with this daily problem.

A+ Network would be the first to admit that not every interference problem warrants the same solution. Still, the FCC's Rules right now provide absolutely no guidance, and no incentives (or sanctions) for applicants to incur the necessary costs of engineering solutions to these problems. At a minimum, the FCC's Rules should be amended to require all shared-frequency applicants and licensees, **"to employ appropriate interconnection equipment or facilities to enable other existing licensees to automatically monitor the applicant's paging transmissions."**

In addition, the FCC's Rules should be amended to provide mandatory notice to incumbent shared-frequency licensees any time an application is filed that could adversely affect the incumbent's service. As is now the case for "RCC" paging, PCP incumbents should have the opportunity to review and protest new or modification applications, due to electrical interference concerns. To the extent that the frequency coordination process survives the FCC's revision of the paging rules, the frequency coordinator should be part of this "notice and comment" process. In addition, the coordinator should be able to make binding recommendations for interference-avoidance, following a brief review of the incumbent's and the applicant's arguments, with due consideration given to the interests of the incumbent's customers. If the FCC has any statutory or other concerns about delegating

these tasks to a frequency coordinator, certainly the FCC's staff could perform these functions, as they do now for "RCC" paging.

D. PCP Licensees have Protected Property Interests.

If the FCC decides not to grant exclusivity in the "lower" PCP bands, while auctioning off the 929/931 paging frequencies, these harmful interference issues and concerns will intensify overnight. Legitimate small businesses and interested paging operators who cannot afford to "bid" for paging spectrum, will have no place to go other than the shared-frequency PCP bands. Therefore, before the FCC unleashes a "run" on these channels, and exacerbates the inherent interference problems found in these bands, it simply must ensure in advance that it has taken all necessary steps to guard these incumbent licensees and their customers from harmful interference.

Though shared licensees by definition do not have an exclusive right to a particular shared frequency, it should also be axiomatic that subsequent applicants should not have the absolute right to demand a license on a particular shared frequency if the grant of that application may result in injury to incumbent service providers. The Rules should be amended to expressly provide incumbent PCP licensees with a degree of protection from harm to which they are entitled under the Communications Act.

Though shared-frequency PCP services are obviously not exclusive channel services, the private carrier is certainly a licensee under Title III of the Communications Act. As such, the PCP license represents the grant to the holder of certain protected "private as well as public" rights and interests. See L.B. Wilson v. FCC, 170 F.2d 793 (D.C.Cir. 1948). The Courts have held that the "private" right of a Title III licensee to operate for a definite term, requiring as it

does a substantial financial investment, is "more than a mere privilege or gratuity." Id. That radio license is "a thing of value to the person to whom it is issued and a business conducted under it may be the subject of injury." Id. Thus, when third parties or acts of the Commission cause "injury" to PCP licensees, PCP property rights are adversely affected, and PCP licensees may be entitled to relief under the Communications Act to the fullest possible extent. The FCC must adopt rules to protect these property interests of shared frequency PCP operators.

III. Exclusivity For Shared Frequency PCPs

The Commission has asked for comments on three alternatives for the shared frequencies: (1) convert the lower bands to exclusive use and implement geographic licensing, (2) issue only a certain number of licenses per shared channel and use competitive bidding to choose among mutually exclusive applications once the limit is reached, or (3) retain the *status quo*. See NPRM at ¶ 32. If we analyze the problems posed by these alternatives, it should become clear why only one of these alternatives is acceptable.

The third alternative, maintaining the *status quo,* is obviously unacceptable. The FCC has already put the paging industry on notice that it intends to auction off at least the "exclusive" paging channels in the 931, and probably the 929 frequency bands. The FCC can't do anything to staunch entrepreneurial initiative or the continuing demand for paging licenses and services, but, it also hasn't done much to make auctions affordable for genuine "small businesses" (this is amply demonstrated by the bidding for SMRS, MDS, and PCS spectrum). Therefore, it stands to reason that any entrepreneur who cannot afford to bid for paging licenses, will immediately flock toward the relatively "free" shared frequency licenses, if no changes are made in those frequency

bands. Thus, if the FCC does nothing but bid off 900 MHZ paging spectrum, without protecting shared-use PCP operators, it will have ensured that these lower band systems are turned into frequency "ghettos".

Alternative number "two" is arbitrary, it would squander substantial agency and industry resources, it would generate little federal revenue, and it bears no relationship to sound spectrum management policy. Most of the high powered shared channels are already licensed, so, this alternative would only invite more interference problems by allowing some unknown additional number of licensees onto these frequencies. A+ Network knows from experience that the FCC will be hard pressed to figure out the "optimum number" of additional licensees to allow on these shared channels; that depends on too many factors that vary from town to town. And, inviting competitive bidding by new entrants on these already congested shared frequencies, would be akin to auctioning off the shuffle-board concession on the Titanic; ultimately, there would be no winners.

The first alternative is the only obvious and rational choice: convert these commercial shared frequencies to exclusive use, in a manner that protects all incumbent operators and their customers. Still, since shared frequency operations are already inherently difficult, expensive, and less valuable than exclusive-use "RCC" paging channels, shared frequency licensees should not be required to "bid" for the right to operate on these frequencies.

A. Exclusivity Alternatives in the Shared Frequency Bands.

The NPRM notes that PCIA has already submitted a Petition for Rulemaking, to request the FCC to adopt shared frequency exclusivity rules along the lines that currently apply to 929 MHZ PCP exclusivity. See NPRM at ¶ 31. A+ Network supports this approach; for a variety of

reasons, it makes sense for the FCC to adopt these proposed exclusivity rules for shared frequencies.

1. **The "929" Exclusivity Model.**

First of all, the paging industry is already familiar with these rules as they apply to 929 MHZ PCP frequencies; thus, there is already an industry consensus in support of these exclusivity rules. Second, because these rules have been in place in the 929 band for several years, they present standards that paging service providers should readily understand and be able to meet. Finally, the relevant frequency coordinator and the FCC's staff now have several years' experience with these exclusivity rules; so, administration of this exclusivity model for shared frequency PCPs should be relatively easy.

As was the case with 929 licensees; the FCC should first allow only incumbent, shared frequency licensees a reasonable period of time, following adoption of exclusivity rules, to notify the FCC of their interest in obtaining an exclusive "designation", and to provide proof of eligibility for that exclusive designation. Following that review period for incumbent licensees, new applicants would be entitled to apply for shared frequencies in those remaining sections of the country where there are no qualified exclusive licensees. New applications should be processed on a "first come, first served" basis, as was the case for 929 frequencies. In those rare instances where two or more mutually exclusive applications are filed on precisely the same day, the FCC could hold a sealed bid or telephonic auction to quickly (and inexpensively) resolve that "MX" situation.

2. **The "Refarming" Exclusivity Model.**

There is another model for shared frequency exclusivity rules that would complement the

"929" exclusivity model; there are practical reasons why the FCC should adopt both sets of exclusivity rules for shared frequency PCPs. The exclusivity proposal that the FCC has proposed in its "refarming" docket for non-commercial private radio services, would certainly work for commercial PCP operators. See NPRM, "Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services", (PR Docket No. 92-235).

Simply put, the "refarming" proposal is this: if co-channel licensees agree to an "exclusivity arrangement", the channel will be declared "exclusive", and no new licensees will be admitted onto that channel, unless the incumbent licensees consent to allow another licensee. Just as common carriers are required to "hold themselves out to the public" to provide service, these incumbent exclusive licensees, if they chose not to allow additional carriers onto a shared frequency, would presumably be required under the Act to lease out airtime to interested paging resellers.

In many parts of the country, this form of exclusivity makes more sense than the "929 model." Many small towns and communities can be adequately served without the minimum six transmitters necessary to earn exclusivity under the 929 exclusivity rules. Some of A+ Network's affiliates provide high quality services to thousands of subscribers, with just a few high power transmitters, at high elevations; they do not need six transmitters to provide these services.

On the other hand, as shown from A+ Network's experience in Jackson, MS and other smaller communities, all incumbent shared frequency PCP operators, large and small, face substantial interference problems and threats to their investments and customers, whenever new applicants refuse to honor existing sharing and interference-avoidance agreements. All these

incumbent PCP operators are entitled to receive some form of exclusivity protection for their investments; particularly since they will now be regulated as common carriers.

The "refarming" exclusivity model makes perfect sense in these situations, and it would not be difficult to administer. During the same time period when the FCC allows incumbent shared frequency operators to request exclusivity under the "929 model", the FCC could allow incumbent operators to submit exclusivity requests under the "refarming model." This would provide all shared frequency operators with substantial incentives to work together to "fix" any shared frequency problems they might have between co-located systems, and present their collaborative exclusivity request to the FCC by the filing deadline. Subsequent licensing and operations would be along the lines suggested here and in the FCC's refarming docket: new carriers would be allowed by consensus of the incumbents, or, just and reasonable leasing terms would be available, assuming the shared frequency has sufficient available "airtime."

A+ Network has previously pointed out to the FCC in that "refarming" docket that there are substantial risks if the FCC adopts an exclusivity proposal for the "non-commercial" channels, but does not coterminously adopt similar rules in the commercial, shared frequency bands. Akin to the risk inherent in allowing exclusivity in only one section of the commercial paging spectrum, such disparate licensing schemes will cause "non-commercial" paging operators who are shut out when those frequencies become exclusive, to flock toward the only remaining available paging frequencies: lower band, shared PCPs. If you are a hospital, law enforcement agency, or small paging system operator that cannot afford to bid for 929/931 spectrum, and have been blocked from applying for "exclusive" non-commercial channels, there will be only one place left to go: the shared, commercial channels.

A+ Network already knows how difficult it is for a commercial paging system to have to shared a frequency with "dispatch" paging operations, such as hospitals and law enforcement agencies. This is a very real problem, and the FCC should not adopt non-uniform paging rules that will only exacerbate this problem.

B. Geographic Service Areas.

In this rulemaking proposal, the Commission states that the "geographic definition used [to define paging service area boundaries] should correspond as much as possible to the geographic area that paging licensees seek to serve." NPRM at 33. On the other hand, for no objective or quantifiable reasons, the FCC has reached a tentative conclusion that "MTAs form the most appropriate geographic area boundaries for paging systems." A+ Network begs to differ; certainly with respect to shared-frequency PCP systems, the vast majority of these systems are substantially smaller than MTA-wide.

At least with respect to shared frequencies, if the FCC were to review its own license files, it would probably find that the bulk of these PCP operators are licensed to operate only in relatively small geographic areas. Even in A+ Network's case, though its overall network now covers most of the United Sates, this network was built through numerous affiliations with local operators who served only one town or city, not an entire state or region. The brilliance of shared frequency operations has been the ingenuity of these small system operators, who pool their resources together (without FCC intervention or guidance) to provide high quality, wide-area paging services, at extremely reasonable rates, to hundreds of thousands of customers.

The point is that the FCC should leave the shared-frequency paging provider alone, and let him or her determine what is an appropriate geographic service area. It is not sound spectrum

management to force licensees to construct state-wide paging systems, if business plans, capital constraints, and customer needs do not warrant such systems.

The exclusivity rules could easily be written to allow shared frequency licensees to qualify for exclusivity wherever their qualified systems happen to be built. Once that PCP system has earned an exclusivity designation, the licensee should be free to make any modifications within the contours of that system, including addition or deletion of transmitter sites, without filing anything at the FCC. Expansions outside that qualified "wide area" system, would be subject to same day "MX" filing procedures, consistent with these comments. [2]

IV. Interference Contours for Shared Frequency PCPs

The NPRM solicits comments on what, if any, interference protection rules should apply to shared frequency PCP operations. See NPRM at ¶ 56. Certainly, if the FCC adopts frequency exclusivity rules for these frequencies, as A+ Network recommends, then these

---

[2] Another major provider of shared-frequency network services, Air Touch Paging, took issue in its interim Reply Comments with A+ Network's opposition to the notion of auctioning shared frequency spectrum, stating that Air Touch's 152.480 network "rivals, in terms of geographic coverage and subscriber usage, many [exclusive frequency] ... networks." AirTouch Paging Reply Comments at ¶ 5. A+ Network certainly concurs with that observation, and with the suggestion that shared frequency licensees are entitled to: some form of exclusivity, some form of wide area license, and any other "benefits" that the FCC intends to bestow on "exclusive frequency" paging operators in this proceeding. The only area of disagreement is this: A+ Network submits that incumbent shared frequency licensees who qualify for, or "earn" exclusivity, should not be required to "bid" at auction to earn exclusivity, or for the right to expand the geographic scope of these systems, other than in cases of same day, mutually exclusive filings. The costs and difficulties of building and operating shared frequency paging systems are quantifiably greater than those for exclusive frequency paging systems. Also, it is by no means apparent that the FCC has statutory authority to auction shared frequencies, since the "winner" would not have the exclusive right to use that frequency. For these and other reasons stated in these comments, shared frequency licenses should continue to be processed without the additional financial burden of auctions.

licensees should be entitled to the same interference protection rights as those afforded other Part 22 licensees in these frequency bands.

If the FCC chooses not to allow exclusivity in the shared frequencies, then it must nevertheless adopt rules that will protect incumbent licensees from harmful co-channel and adjacent system interference. Now that all commercial PCP licensees are subject to common carrier and Title III licensing obligations, the FCC can no longer ignore these shared frequency interference problems, or tell these licensees that they have "assumed the risks" inherent in shared frequency operations (which is precisely what the Private Radio Bureau used to tell PCP licensees who complained about shared channel interference).

V. Height/Power Limitations; Technical Issues

The NPRM solicits comments on what height/power and other operational rules should apply to shared frequency PCPs, assuming exclusivity rules are adopted. NPRM at ¶ 61. A+ Network agrees that existing height/power rules could remain in place. The central concern of parity across the radio paging spectrum should govern all of the FCC's actions in these proceedings. Since the FCC has surprisingly taken this opportunity to tinker with the interference, height/power, and other operational rules that were only recently adopted in the Part 22 "Rewrite" proceeding, it should at least ensure that any changes to these rules will not leave shared frequency PCP licensees at an operational disadvantage compared to "RCC" paging licensees.

VI. Auctions are Inappropriate for Shared Spectrum

The creation of wide-area licenses and some form of exclusivity for shared frequency

paging licensees, does not mean that wide-area auctions are appropriate for these handful of shared frequencies. A+ Network previously commented, during the "Interim Licensing" comment period, on why wide-area auctions are so inappropriate for these frequencies. Since there are less than 12 of these high power shared frequencies allocated for commercial paging, and two of these (152.480 and 157.740) are already intensively used throughout most of the Country, it makes little administrative sense, there would be little revenue gain, and there would be substantial adverse operational concerns, if the agency were to suddenly order incumbent shared-use licensees to bid for the right to expand the geographic scope of their systems. Moreover, it is by no means apparent that the FCC has statutory authority to impose auctions on applicants who will not be entitled to "exclusive use" of these shared frequencies.

Instead, assuming the FCC first grants "exclusivity" to shared frequency licensees, the FCC should hold auctions only for legitimate, mutually exclusive filings, based on same-day filing procedures. Those auctions should be eminently easy and inexpensive to administer. This will allow shared frequency networks to continue to expand as dictated by customer demands, rather than by arbitrary MTA borders.

In any event, the FCC must ensure that the shared frequencies do not become the "dumping grounds" for speculative filings and every one-transmitter system that can't afford to bid for paging spectrum. The FCC should use non-auction means to protect the incumbents' investments, and allow for the orderly growth of shared frequency systems.

VII. Response to IRFA: Impact on Small Entities

Section 603 of the Regulatory Flexibility Act requires the FCC to determine the

"expected impact on small entities" of the policies and rules proposed in this NPRM. The new Telecom Act of 1996 also requires this agency to, within 15 months following enactment of that law, to "identify and eliminate ... market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services ...." 47 U.S.C.§ [257(a)].

The FCC has concluded that its paging auction proposals will "facilitate small businesses' ability to access capital and enter the wireless market ..., increase the flexibility of small businesses and lessen the administrative burden on small entities." See NPRM, Appendix A. As a company that has grown from being a very "small entity", to a relatively large one, in only about eight years, A+ Network is particularly well qualified to comment on these FCC conclusions.

It is difficult to fathom how the implementation of auctions for paging spectrum will "facilitate access to capital" or "eliminate market entry barriers" for small businesses; the contrary is self-evident. The obvious fact is that auctions will exponentially increase the costs of obtaining paging licenses; that money will not be invested in improved paging services, plant, equipment, personnel, or even in additional FCC resources; that money will simply be squandered in the government's general federal trough.

Bankers and investors are not nearly as stupid as anyone who believes that auctions are good for the paging industry; they know that auctions will increase the costs of getting into, or staying in, this business. That necessary conclusion will inevitably be factored into the risks that are already inherent in the paging industry; it will almost certainly increase the costs of debt and equity financing for the paging industry. It is bordering on disingenuous for this agency to

publicly pretend that this is not the case.

Wide-area licensing might alleviate some administrative burdens on the FCC and on *some* small entities; however, for the most part, those savings will be seen only by the largest carriers who already qualify for MTA licenses, or who can afford to bid for them. So, it is simply not accurate for this agency to suggest that its proposals will bring "administrative" benefits for small entities.

To the contrary, the administrative burdens imposed by bidding for the right to expand a paging system, or to acquire a license in unserved areas, will be daunting for every entity, large and small. The FCC's auctions to date have proven this point: they have been an administrative nightmare for most every participant. The costs of obtaining the necessary bidding hardware and software, the costs of dialing into the FCC's bidding system, the costs of training and maintaining a full-time bidding staff to engage in the auction process, the constant distractions and lengthy delays that have accompanied the prolonged auctions for PCS, SMRS, and MDS services, all prove that auctions have been and will continue to be a costly, resource-draining, administrative burden for every auction participant. Of course, that does not even account for the burdens imposed by the actual bid costs themselves.

The FCC was not terribly active in promoting entry opportunities in the paging industry when licenses were available for the mere cost of an FCC application; it is passing strange that this agency should now be promoting these opportunities for "small entities", particularly since auctions will so obviously heighten the financial risks, and lessen the potential rewards, attendant to this business. If the FCC is determined to auction off paging spectrum, it should at least be honest about the impact of auctions on the participants, and warn "small entities" to save

their money, and look for other less risky business opportunities.

CONCLUSION

FOR ALL THESE REASONS, A+ Network respectfully requests that the Commission modify its tentative conclusions, and adopt rules for shared frequency paging operations consistent with the forgoing recommendations.

Respectfully submitted,

A+ Network

By: _____

Frederick M. Joyce
Christine McLaughlin
Its Attorneys

JOYCE & JACOBS, Attys. at Law, LLP
1019 19th Street, N.W.
14th Floor, PH-2
Washington, D.C. 20036
(202) 457-0100

Date: March 18, 1996

f:\clients\rj75\auction.pld